OPINION OF TRUSTEES

In Re

Complainant: Employee Respondent: Employer

ROD Case No: <u>84-297</u> - July 2, 1987

<u>Board of Trustees</u>: Joseph P. Connors, Sr., Chairman; Paul R. Dean, Trustee; William B. Jordan, Trustee; William Miller, Trustee; Donald E. Pierce, Jr., Trustee.

Pursuant to Article IX of the United Mine Workers of America ("UMWA") 1950 Benefit Plan and Trust, and under the authority of an exemption granted by the United States Department of Labor, the Trustees have reviewed the facts and circumstances of this dispute concerning coverage of disposable diapers for the Employee's disabled dependent under the terms of the Employer Benefit Plan.

Background Facts

The Employee's eight-year-old dependent daughter suffers from a congenital thoraco-lumbar meningomyelocele rendering her partially paralyzed and incontinent of urine and feces. The Employer has denied coverage for the incontinent supplies necessitated by the Employee's dependent's condition and provided for her on October 16, November 15, and December 9, 1985.

The Funds has determined that the Employer is no longer in business, effective July 31, 1986, and the Employee has been advised by letter that the Funds will provide health benefits coverage for him and his eligible dependents pursuant to Article II E. of the UMWA 1974 Benefit Plan and Trust, effective August 1, 1986.

<u>Dispute</u>

Is the Employer responsible for the provision of health benefits coverage the Employee's dependent's disposable diapers?

Positions of the Parties

<u>Position of the Employee</u>: The Employer is responsible for the provision of health benefits coverage for the Employee's dependent's disposable diapers because they are a covered benefit under the Employer Benefit Plan.

<u>Position of the Employer</u>: The Employer's insurance carrier has denied benefits for the Employee's dependent s disposable diapers because they are not considered durable medical

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equipment and are therefore not covered under the Employer Benefit Plan. The Employer has not provided its position in this dispute.

Pertinent Provisions

Article III. A. (7)(a) of the Employer Benefit Plan states in part:

(7) Other Benefits

(a) Orthopedic and Prosthetic Devices

Benefits are provided for orthopedic and prosthetic devices prescribed by a physician when medically necessary. The following types of equipment are covered:

1. Prosthetic devices which serve as replacement for internal or external body parts, other than dental.

These include artificial eyes, noses, hands (or hooks), feet, arms, legs and ostomy bags and supplies.

Question and Answer #81-38:

Subject: Medical Equipment and Supplies

References: Amended 1950 & 1974 Benefit Plans & Trusts, Article III, Sections A (6) (d) and (e), and A (7) (a) and (d)

Question:

What medical equipment and supplies are covered under the Plan?

Answer:

- A. Under the Home Health Services and Equipment provision, benefits are provided for the rental and, where appropriate as determined by the Plan Administrator, purchase of medical equipment and supplies (including items essential to the effective use of the equipment) suitable for home use when determined to be medically necessary by a physician. These supplies and equipment include, but are not limited to, the following:
 - 1. Durable Medical Equipment (DME) which (a) can withstand use (i.e., could normally be rented), (b) is primarily and customarily used to service a medical purpose, (c) generally is not useful to a person in the absence of

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- an illness or injury, and (d) is appropriate for use in the home. Examples of covered DME items are canes, commodes and other safety bathroom equipment, home dialysis equipment, hospital beds and mattresses, iron lungs, orthopedic frames and traction devices, oxygen tents, patient lifts, respirators, vaporizers, walkers and wheel chairs.
- 2. Medical supplies necessary to maintain homebound or bedridden Beneficiaries. Examples of covered supplies are enema supplies, disposable sheets and pads (also called 'Chux' or 'blue pads"), supplies for home management of open or draining wounds, heating pads (for therapeutic use only) and insulin needles and syringes.
- 3. Oxygen, as specified in Article III, Section A (6) (e).
- B. Under the Other Benefits provision, benefits are provided for the following:
 - 1. Orthopedic and prosthetic devices prescribed by a physician when medically necessary, including items necessary for their effective use. These include, but are not limited to, the following items:
 - prosthetic devices replacing internal or external body parts (other than dental), such as cardiac pacemakers, maxillofacial devices and devices replacing all of the ear or nose, and waste collection and retention devices for incontinent people (e.g., catheters, ostomy bags and supplies)
 - prosthesis following breast removal, including surgical brassieres
 - leg, arm, back and neck braces
 - trusses
 - stump stocking and harnesses (see Article III, Section A (7) (a) (5)
 - surgical stockings (see 1981 Contract Q&A #46)
 - orthopedic shoes and corrections (see Article III, Section A (7) (a) 7 and 8)
 - 2. Hearing aids (see Article III, Section A(7)(d)).
- C. Items of a convenience nature or those that do not require professional judgment, recommendations or instructions to purchase or use are not covered benefits. Examples of such items are: ordinary support (panty) hose, garter belts, disposable paper cups or towels, cotton balls, cotton swabs, bandaids, exercise equipment, and foot pads for bunions or calluses.

Covered items under A and B are not subject to copayment.

Discussion

Plan provisions, as interpreted in Question and Answer #81-38, include benefits for waste collection and retention devices for incontinent beneficiaries. The disposable diapers in this case

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are used as a necessary supply for the maintenance of the Employee's incontinent, dependent daughter and are, in fact, waste collection and retention devices, which are covered under the Employer Benefit Plan.

Opinion of the Trustees

The Employer is responsible for the provision of benefits for the Employee's dependent daughter's disposable diapers through July 31, 1986.